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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BAKER & DANIELS
111 E. WAYNE STREET
SUITE 800
FORT WAYNE, IN 46802

EXAMINER

NGUYEN, DINH Q

ART UNIT PAPER NUMBER

3752

DATE MAILED: 02/25/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,181

Applicant(s)

TITINET, GIANNI CLERICO

Examiner

Dinh Q Nguyen

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 22-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 1-28 are objected to because of the following informalities: the limitation "shower head" should read --showerhead--. Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/277,342. Although the conflicting claims are not identical, they are not patentably distinct from each other because of common subject matter, as follows:

Claims 1 and 14 of the instant application cites a shower head housing, a plurality of nozzle positioned on the shower head assembly, a plurality of nozzle inserts with each of the nozzle insert having a flexible nozzle tip which are fully disclosed in claims 1 and 14 of the '342 application.

Furthermore, claims 1 and 14 of the instant application is broader than claims 1 and 14 of the '342 application which discloses all the limitations of the cited claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergmann et al.

Bergmann discloses a showerhead assembly 101 having a showerhead housing 105, a plurality of nozzles 108 on an adapter 120, and a plurality of insert 106 with a flexible tip for manual rubbing (see column 2, lines 18-48).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen Bergmann et al. in view of Meyer.

Bergmann et al. teaches all the limitations of the claims except for a nozzle insert formed from an outer sleeve and an inner cannula member. However, Meyer discloses a spraying device having a plurality of nozzles 12 each has an insert 18 with flexible tip 25, the insert 18 with an outer sleeve 22 and an inner cannula member 19. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Bergmann with a nozzle insert formed from an outer sleeve and an inner cannula member as suggested by Meyer. Doing so would provide a way to secure the nozzle tip (column 2, lines 24-26).

With respect to claims 3 and 16, Bergmann et al. in view of Meyer does not disclose expressly a co-injected part with the outer sleeve formed over the inner cannula member. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the insert of Chen and Meyer with a co-injected part in which the outer sleeve formed over the inner cannula member because Applicant has not disclosed that a co-injected part for the outer sleeve and the inner cannula member provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either Bergmann and Meyer insert or a co-injected insert because the both perform the function of spraying fluid. Therefore, it would have been an obvious matter of design choice to modify the Chen and Meyer insert to obtain the invention as specified in claims 3 and 16.

8. Claims 5-9, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergmann et al. in view of Meyer as applied to claims 2-4, 15-17 above, and further in view of Grassberger.

Bergmann in view of Meyer teaches all the limitations of the claims except for the inner cannula member that is formed from a material with a shore hardness of about 30-50 sh A. However, Grassberger discloses a nozzle insert 12 formed a material with Shore hardness of approximately 40-50. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Bergmann and Meyer with the inner cannula member with a shore hardness of about 30-50 sh A as suggested by Grassberger. Doing so would provide a way to remove any build-up in the inserts of the showerhead (column 2, lines 66-68 and column 3, line 1-3).

With respect to claims 6-9, and 18-20, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the insert of Bergmann and Meyer with the outer sleeve or the inner cannula member that is formed of material with shore hardness of 90 sh A or formed of polypropylene material. Doing so would provide a way to remove any build-up in the inserts of the showerhead (column 2, lines 66-68 and column 3, line 1-3).

9. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergmann et al. in view of Meyer as applied to claims 2-4, 15-17 above, and further in view of Scheidler.

Bergmann in view of Meyer teaches all the limitations of the claims except for a brass or a chrome finish. However, Scheidler discloses a showerhead with chrome or

brass finish (column 2, lines 1-14). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Bergmann and Meyer with a brass or a chrome finish as suggested by Grassberger. Doing so would provide a showerhead with a protective finish.

Allowable Subject Matter

10. Claims 22-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 5,826,803 to Cooper is cited to show a spray head with a plurality of nozzles and inserts.

Response to Arguments

12. Applicant's arguments filed December 05, 2003 have been fully considered but they are not persuasive.

13. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q Nguyen whose telephone number is (703) 305-0248. The examiner can normally be reached on Monday-Friday 6:30-4:00 alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q. Nguyen
Patent Examiner
Art Unit 3752

dqn